

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS – TYLER DIVISION

AdjustaCam LLC,

Plaintiffs,

vs.

Amazon.com, Inc., et al.,

Defendants.

Civil Action No: 6:10-cv-00329 LED
Jury

DEFENDANTS’ BALTIC LATVIAN UNIVERSAL ELECTRONICS, LLC D/B/A BLUE MICROPHONES, LLC D/B/A BLUE MICROPHONE AND BLUE MICROPHONES, LLC’S MOTION TO DISMISS AND NOTICE OF JOINDER IN DEFENDANT WAL-MART STORES, INC.’S AND DELL INC.’S MOTIONS TO DISMISS PLAINTIFF’S ALLEGATIONS OF INDIRECT INFRINGEMENT AND WILLFUL INFRINGEMENT FOR FAILURE TO STATE A CLAIM

For the reasons set forth in Wal-Mart Stores, Inc.’s Partial Motion to Dismiss For Failure to State A Claim (Dkt. No. 147) and Dell Inc.’s Partial Motion to Dismiss Plaintiff’s Allegations of Indirect Infringement and Willful Infringement For Failure to State A Claim (Dkt. No. 164), and pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants (1) Baltic Latvian Universal Electronics, LLC d/b/a Blue Microphones, LLC d/b/a Blue Microphone and (2) Blue Microphones, LLC (collectively “Blue Microphone”) move to dismiss Plaintiff AdjustaCam LLC’s (“AdjustaCam”) allegations of indirect infringement and willful infringement in AdjustaCam’s First Amended Complaint (Dkt. No. 111) (“Complaint”). Blue Microphone fully adopts and incorporates as its own the arguments and authorities set forth in Wal-Mart Stores’ and Dell Inc.’s respective motions. Blue Microphone requests that Wal-Mart Stores’ Motion and Dell Inc.’s motions be granted in Blue Microphone’s favor on all the grounds set forth therein and that any relief ordered by the Court with regard to Wal-Mart Stores’ Motion or Dell’s Motion also be ordered in favor of Blue Microphone.

As pointed out in Dell Inc.’s motion, AdjustaCam fails to allege a cause of action for

indirect infringement because the Complaint fails to allege any knowledge on Blue Microphone's part of the patent-in-suit *before* the lawsuit was filed. Instead, Adjustacam makes a vague, boilerplate allegation of indirect infringement against Blue Microphone at paragraph 72 of the Complaint, which is plainly inadequate under the law. (See Dell Motion, DKT #164, at 2-4; see also Wal-Mart Motion, DKT #147, at 8-9). Furthermore, as pointed out in Wal-Mart Stores' Motion, Adjustacam fails to alleged that Blue Microphone offered to sell or sold any particular component or that such component was a material part of an infringing device, which is not a sufficient pleading of contributory infringement. Neither, for that matter, did Adjustacam plead that Blue Microphone acted with knowledge that a component of a patented machine was especially made or especially adapted for use in infringement of the patent-in-suit, or that the component does not have a substantial non-infringing use. (See Wal-Mart Motion, DKT #147, at 10-11). Furthermore, Adjustacam failed to reference any subsection of 35 U.S.C. § 271 in its complaint, or to otherwise plead sufficient factual allegations to support a claim of contributory infringement. (See *Id.*).

Accordingly, Blue Microphone respectfully requests that Plaintiff's First Amended Complaint be dismissed on all the grounds stated in the Motions to Dismiss filed by Wal-Mart Stores and Dell Inc. Blue Microphone further respectfully requests that the First Amended Complaint be dismissed with prejudice with respect to Blue Microphone.

October 6, 2010

Of counsel

Michael D. Harris, Cal. Bar No. 59,470
MHarris@socalip.com
Steven C. Sereboff, Cal. Bar No. 156,731
SSereboff@socalip.com
Kala Sarvaiya, Cal. Bar No. 238,453
KSarvaiya@socalip.com
SOCAL IP LAW GROUP LLP
310 N. Westlake Blvd., Suite 120
Westlake Village, CA 91362-3788
Phone: (805) 230-1350
Fax: (805) 230-1355

/s/ Michael D. Harris, with permission by
Allen F. Gardner

Michael E. Jones, State Bar No. 10929400
mikejones@potterminton.com
Allen F. Gardner, State Bar No. 24043679
allengardner@potterminton.com
POTTER MINTON, A Professional Corporation
110 North College, Suite 500
Tyler, TX 75702
Phone: (903) 597-8311 • Fax: (903) 593-0846

**Attorneys for Defendants Baltic Latvian
Universal Electronics, LLC and Blue
Microphones, LLC**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on October 6, 2010. Any other counsel of record will be served by First Class U.S. mail on this same date.

/s/ Allen F. Gardner